

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**RICKY WAYNE TOLBERT, JR.,  
Inmate No. 32656-177,**

**Petitioner,**

**v.**

**USA,**

**Respondent.**

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**No. 3:15-CV-0234-P**

**ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE, AND  
PROSPECTIVELY CERTIFYING ANY APPEAL AS NOT TAKEN IN GOOD FAITH**


The United States Magistrate Judge has issued Findings, Conclusions and Recommendation (“FCR”) in this case. Petitioner has filed objections to the FCR. After reviewing all relevant matters of record in this case, including the FCR and the filed objections to the FCR, in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(3), the Court finds that the Findings and Conclusions of the Magistrate Judge are correct. It has conducted a de novo review and determination as to the issues to which Petitioner has specifically objected. Having reviewed the remainder of the Findings, Conclusions, and Recommendation of the Magistrate Judge for clear error, it is satisfied that there is no clear error on the face of the record. Accordingly, the Court hereby **ACCEPTS** the Findings and Conclusions of the Magistrate Judge as the Findings and Conclusions of the Court and **DISMISSES WITHOUT PREJUDICE** the petition for writ of habeas corpus filed under 28 U.S.C. § 2241 for want of jurisdiction.

The Court prospectively **CERTIFIES** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). In support of this certification,

the Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions, and Recommendation. *See Baugh v. Taylor*, 117 F.3d 197, 202 & n.21 (5th Cir. 1997). Based on the Findings and Recommendation, the Court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed in forma pauperis on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; Fed. R. App. P. 24(a)(5).

In the event Petitioner files a notice of appeal, he must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

**SO ORDERED this 16th day of April, 2015.**

  
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**JORGE A. SOLIS**  
**UNITED STATES DISTRICT JUDGE**